

**DRAFT: 9<sup>th</sup> Update Code Language—Process and Use Changes****PROCESS AMENDMENTS:****ISSUE #1: Process for Grading and Right-of-Way Improvement Permits****§62.1205      Duration of a *Public Right-of-Way Permit* to Excavate Within a Public Street**

It shall be unlawful for any person or *public utility* to excavate within the roadway section of a street in the *public right-of-way* without a valid *Public Right-of-Way Permit* ~~under~~ **issued in accordance with** Section 129.0702 **129.0741**. Notwithstanding Chapter 12, Article 9, Division 7, ~~Section 129.0743 and Section 129.0744~~, a *Public Right-of-Way Permit* to excavate within the roadway section of a public street shall be void if the excavation has not begun within ninety calendar days of the start date specified in the permit, if the excavation is not pursued diligently to its conclusion, or if the excavation and restoration has not been completed within one calendar year from the permit issuance.

**~~§129.0642      Initial Utilization of a Grading Permit~~**

~~A Grading Permit shall become void if the work authorized by the permit had not begun within 180 calendar days of the date of permit issuance.~~

**~~§129.0643      Maintaining Utilization of Grading Permit~~**

~~A Grading Permit shall become void if, at any time after the work has begun, the *grading* or other work authorized by the Grading Permit is suspended or abandoned for a continuous period of 180 calendar days, unless the Grading Permit is associated with a valid Building Permit.~~

**~~§129.0743      Initial Utilization of a Public Right-of-Way Permit~~**

~~A Public Right-of-Way Permit shall become void if the work authorized by the permit has not begun within 180 calendar days of the date of permit issuance.~~

**~~§129.0744      Maintaining Utilization of a Public Right-of-Way Permit~~**

~~A Public Right-of-Way Permit shall become void if, at any time after the work has begun, the work authorized by the permit is suspended or abandoned for a period of 180 calendar days, unless the Public Right-of-Way Permit is associated with a valid Building Permit.~~

**ISSUE #2: Expiration of Application****§112.0102      Application Process**

An application for a permit, map, or other matter shall be filed with the City Manager in accordance with the following requirements:

(a) through (c) [No change.]

(d) Expiration of Application.

(1) through (2) [No change.]

(3) The expiration period for applications subject to a code violation case with a date set forth for corrective action by civil penalty notice & order shall be automatically extended an additional 180 calendars from the date set in the civil penalty notice & order. If the date set forth for corrective action in the civil penalty notice & order is less than 2 years from the date the permit or map application is deemed complete, then the existing application may be extended in accordance with Section 112.0102(d)(2).

~~(3)~~(4) Once expired, the application, plans, and other data submitted for review may be returned to the *applicant* or destroyed by the City Manager.

~~(4)~~(5) To reapply, the *applicant* shall submit a new application with required submittal materials and shall be subject to all applicable fees and regulations in effect on the date the new application is *deemed complete*.

### **ISSUE #3: Process to Approve Water Supply Assessments**

#### **§112.0103 Consolidation of Processing**

(a) When an *applicant* applies for more than one permit, map, or other approval for a single *development*, the applications shall be consolidated for processing and shall be reviewed by a single decision maker, except as otherwise provided by Section 112.0103(b) and (c).

(1) The decision maker shall act on the consolidated application at the highest level of authority for that *development* as set forth in Section 111.0105.

(2) The *findings* required for approval of each permit shall be considered individually, consistent with Section 126.0105.

(3) Where the consolidation of processing combines Process Two, Process Three, Process Four, or Process Five with Process CIP-Two or Process CIP-Five, the consolidation shall be made as follows:

~~(A)~~(A) Consolidation of Process Two and Process CIP-Two shall be consolidated into Process CIP-Two.

~~(B)~~(B) Consolidation of Process Three, Process Four, or Process Five with Process CIP-Five shall be consolidated into Process CIP-Five, except that any consolidation with a Process Five for rezoning shall be consolidated into Process Five.

- (b) A Water Supply Assessment (WSA) required under the California Environmental Quality Act and California Water Code shall be considered by the City Council at a noticed public hearing. However, the associated *development permit* applications are not required to be consolidated with approval of the WSA as further described below:
- (1) When the project under consideration is a Process Two, Three or Four, the City Council must consider and approve the project WSA prior to the lower decision making body's consideration of the project and environmental document.
  - (2) When the project under consideration is a Process Five, the WSA may be considered by the City Council at the same hearing the CEQA document and the project are considered by the City Council, or at a prior noticed public hearing.
- (c) [See Issue #4.]

**ISSUE #4: Consolidation of Processing in Relation to Code Violations**

**§112.0103 Consolidation of Processing**

- (a) When an *applicant* applies for more than one permit, map, or other approval for a single *development*, the applications shall be consolidated for processing and shall be reviewed by a single decision maker, except as otherwise provided by Section 112.0103(b) and (c).
- (1) The decision maker shall act on the consolidated application at the highest level of authority for that *development* as set forth in Section 111.0105.
  - (2) The *findings* required for approval of each permit shall be considered individually, consistent with Section 126.0105.
  - (3) Where the consolidation of processing combines Process Two, Process Three, Process Four, or Process Five with Process CIP-Two or Process CIP-Five, the consolidation shall be made as follows:
    - ~~(a)~~(A) Consolidation of Process Two and Process CIP-Two shall be consolidated into Process CIP-Two.
    - ~~(b)~~(B) Consolidation of Process Three, Process Four, or Process Five with Process CIP-Five shall be consolidated into Process CIP-Five, except that any consolidation with a Process Five for rezoning shall be consolidated into Process Five.

- (b) [See Issue #3.]

- (c) A corrective action necessary to respond to a code violation case shall not be consolidated for processing.

**ISSUE #5: Published Notice Requirement for Ad Hoc Fees**

**§112.0301 Types of Notice**

(a) through (b) [No change.]

(c) Notice of Public Hearing. A Notice of Public Hearing shall be provided before a decision is made on an application for a permit, map, or other matter acted upon in accordance with Process Three, Process Four, Process Five, or Process CIP-Five, or an appeal of a Process Two, Process CIP-Two, Process Three, or Process Four decision, or of an *environmental* determination. A Notice of Public Hearing shall also be provided before a decision is made by the City Council in accordance with Section 132.1555 (Overrule Process).

(1) through (2) [No change.]

(3) Distribution. Except as otherwise provided by the Municipal Code, the City Manager shall publish the Notice of Public Hearing in accordance with ~~s~~Section 112.0303, and shall mail the Notice of Public Hearing to the persons described in ~~s~~Section 112.0302(b), at least 10 *business days* before the date of the public hearing.

(d) through (e) [No change.]

**§112.0303 Published Notice**

(a) When the Land Development Code requires a Notice of Public Hearing to be published, the City shall submit the Notice of Public Hearing for publication in at least one newspaper of general daily circulation within the City, except as identified in Section 112.0303(b) where special published notice is required in accordance with state law. A published notice is effective on the date of publication.

(b) Actions that include the imposition of ad hoc fees by the City Council shall require a Notice of Public Hearing to be published in a newspaper of general daily circulation as two published notices with at least five days intervening between the first and last publication dates (not counting the publication dates) for compliance with the Mitigation Fee Act (Government Code Section 6062a).

**ISSUE #6: Clarification Regarding Claims of Failure to Receive Notice**

**§112.0309 Failure to Receive Notice**

The failure of any person to receive notice given in accordance with this division and the State of California Planning and Zoning Laws shall not constitute grounds for any court to invalidate any action taken by the City for which the notice was provided. Furthermore, the action shall not be held invalid for noticing errors unless there was a prejudicial error.

**ISSUE #7: Appeal Period for Map Waivers and Tentative Maps**

**§112.0504 Process Two Appeal Hearing**

- (a) The Planning Commission shall hear appeals of Process Two decisions subject to the following requirements, unless otherwise specified in the Land Development Code.
- (1) [No change.]
- (2) Request for a Process Two Appeal Hearing.
- (A) A Process Two decision may be appealed by filing an application for a Process Two appeal hearing with the City Manager no later than 12 *business days* after the *decision date*, unless more time is afforded by state law.
- (B) ~~If an applicant appeals the denial of~~ Pursuant to Subdivision Map Act section 66452.6(e), an applicant has at least 15 calendar days to file an appeal if their application for an Extension of Time for a map waiver or *tentative map* in accordance with Sections 125.0124 and 125.0461 is denied, the decision may be appealed no later than In such cases, the maximum time period for filing an appeal would be 12 business days or 15 calendar days after the decision date, whichever is greater in ~~accordance with Subdivision Map Act section 66452.6(e).~~
- (3) through (5) [No change.]
- (b) [No change.]

**ISSUE #8: Process to Modify Conditions of Approval of a Recorded Map**

**§125.0141 Decision Process for Correction and Amendment of Maps**

A decision on an application to correct or amend a recorded map shall be made in accordance with the following:

- (a) through (b) [No change.]
- (c) Modified Conditions: If the proposed amendments modify or eliminate conditions of approval of the recorded map or do not substantially conform with the approved *tentative map*, ~~the City Council shall make the decision on the application for the amended map in accordance with Process Five~~ shall be acted upon in accordance with the process that would apply to the same map as a new application.

**ISSUE #9: Extension of Time Applications for Development Permits**

**§125.0461 Extension of Time for a Tentative Map**

The expiration date of a *tentative map* may be extended as follows:

- (a) The expiration date of a *tentative map* may be extended one or more times if the extensions do not exceed a total of 72 months in accordance with the *Subdivision Map Act*. This time frame does not include any legislative extensions enacted pursuant to state law.
  - (1) Request for Extension. An application for Extension of Time for a *tentative map* shall be filed before the expiration date of the *tentative map* but not more than ~~60 calendar days~~ **12 months** before the expiration date, in accordance with Section 112.0102. When an application for Extension of Time is filed, the *tentative map* shall be automatically extended for a period of 60 calendar days from the expiration date or until the Extension of Time is approved, conditionally approved, or denied, whichever occurs first.
  - (2) through (4) [No change.]
- (b) through (c) [No change.]

#### **§126.0111 Extension of Time of a Development Permit**

- (a) Expiration Date. The expiration date of an approved *development permit* may be extended one or more times, ~~provided the~~ **The development permit approval and subsequent permit extensions do shall** not exceed a total of ~~36 months~~ **72 months** beyond the expiration of the initial utilization period. **initial development permit approval date with the following exceptions:**
  - (1) **This time frame does not include any legislative extensions enacted pursuant to state law, or any development permit time extensions granted by the City Council by ordinance that extend the expiration of a development permit beyond the maximum 72 month permit expiration period.**
  - (2) When a *development permit* is associated with a *tentative map*, any map extensions granted pursuant to state law shall automatically extend the expiration of associated *development permits* to coincide with the expiration of the *tentative map*. ~~This extension of time shall not be subject to the 36-month restriction.~~
- (b) Request for Extension. Before the expiration of an approved *development permit*, but not more than ~~60 calendar days~~ **12 months** before the expiration date, an *applicant* may file an application for an extension of time to a *development permit* in accordance with Section 112.0102. If an application for extension of time is filed, the *development permit* shall be automatically extended for a period of 60 calendar days from the expiration date or until a decision on the extension of time has been made, whichever occurs ~~last~~ **first**.
- (c) [No change.]

- (d) Decision Process. A decision on an application for an extension of time of a *development permit* shall be made in accordance with Process Two, except that it shall be appealable in accordance with Section 126.0111(i). If the extension of time is granted, the time period for the extension of time shall begin from the date of expiration of the previously approved *development permit*.

(e) through (i) [No change.]

#### **ISSUE #10: Process for Easement Vacations**

##### **§125.1030 Decision Process for an Easement Vacation**

- (a) A decision on an application to vacate a *public service easement* requested in accordance with Section 125.1010(b) or to vacate any other type of easement requested in accordance with Section 125.1010(c) shall be made by the City Council in accordance with Process Five, except that a recommendation by the Planning Commission is not required. The requirement for a Planning Commission recommendation hearing shall also be waived for any associated coastal development permit that is required solely for the easement vacation.
- (b) A decision on an application to vacate a *public service easement* requested in accordance with Section 125.1010(a) shall be made in accordance with Process Two, except that the decision shall be appealable directly to the City Council.
- (1) This process is intended to provide an alternative to other procedures provided by law for the vacation of *public service easements*.
  - (2) Once a *public service easement* vacation has been approved in accordance with this section and all appeal rights have been exhausted, the City Engineer shall execute a quitclaim deed conveying the City's right, title and interest in the unused *public service easement* to the property owner.

#### **ISSUE #11: Utilization of a Development Permit**

##### **§126.0108 Initial Utilization of a Development Permit**

- (a) A *development permit* grants the *applicant* 36 months to initiate utilization of the permit.
- (1) The purpose of the utilization requirement is to ensure that prior to expiration of the *development permit* at least one of the following occurs:
    - (A) Significant investment has been incurred to meet permit conditions;
    - (B) Substantial work has been performed in reliance of the permit granted; or
    - (C) Use of the property is occurring in the manner granted by the permit.

(2) The burden of proof is on the *permit holder* to establish with evidence, in accordance with Section 126.1108(b), that the permit shall not expire.

(3) If none of the actions listed in Section 126.0108(b) has occurred within 36 months after the date on which all rights of appeal have expired, and an application for extension of time has not been submitted, then the *development permit* shall be void.

(b) A *development permit* may be utilized by providing evidence of any one of the following methods:

- (1) Issuance of a *construction permit* for the entire project or for a substantial portion of the activity regulated by the *development permit*, as determined by standards developed by the City Manager;
- (2) Compliance with the terms contained in the individual permit, such as a phasing program, or the terms contained in an approved Development Agreement;
- (3) Evidence of substantial use in progress in the manner granted by the permit, according to standards as developed by the City Manager; or
- (4) Approval of a *final map* or a *parcel map*, or acceptance of an easement, if the map or easement was a condition of the *development permit*.

#### **§126.0109 — Maintaining Utilization of a Development Permit**

(a) If issuance of a *construction permit* in accordance with Section 126.0108 is the method used for initial utilization of the *development permit*, the *construction permit* shall be kept active until completion of the final inspection or issuance of the certificate of occupancy to maintain utilization of the *development permit*.

(b) If the *construction permit* is allowed to expire before completion of the project, the initial utilization of the *development permit* gained by that *construction permit* shall become void.

(c) A *development permit* that is voided in accordance with 126.0109(b) may be reactivated by obtaining a new *construction permit* either during the original 36-month timetable for that *development permit*, or during the timeline as may have been extended in accordance with Section 126.0111.

#### **ISSUE #12: Cancellation or Rescission of a Development Permit**

##### **§126.0110 Cancellation or Rescission of a Development Permit**

(a) [No change.]



- (b) Once a *development permit* has been utilized, an owner or permittee may submit an application to rescind the *development permit* in accordance with the following:
  - (1) Where the *development* complies with all use and *development* regulations the application to rescind a *development permit* shall be processed in accordance with Process One.
  - (2) For *development* not in compliance with Section 126.0110(b)(1), an application to rescind a *development permit* shall be processed in accordance with the same process as would a new application for the same permit.
  - (3) The City shall forward a written declaration of the rescission to the County Recorder for recordation in accordance with Section 126.0106. The *development permit* shall be void on the date that the declaration of rescission is recorded with the County Recorder. The City shall mail a copy of the declaration of rescission to the owner and permit holder.

#### **ISSUE #13: Minor Modifications or Amendments to Development Permits**

##### **§126.0112 Minor Modifications to a Development Permit**

- (a) A proposed minor modification to an approved *development permit* may be submitted to the City Manager to determine if the revision is in *substantial conformance* with the approved permit.
- (b) If the revision is determined to be in *substantial conformance* with the approved permit, the revision shall not require an amendment to the *development permit*.
- (c) Where a new regulation in the Land Development Code takes effect after the effective date of a *development permit*, the *development* may have the benefit of the new regulation without requiring an amendment to the *development permit* if it is determined to be in *substantial conformance* with the approved permit.
- (d) Within the Coastal Overlay Zone, any *substantial conformance* determination shall be reached through a Process Two review, except that a *substantial conformance* determination for a *capital improvement program project* shall be reached through a Process CIP-Two review.

#### **ISSUE #14: Flexibility for Modifications to Industrial Development**

##### **§126.0113 Amendments to a Development Permit**

- (a) A proposed revision to an approved *development permit* that would significantly reduce the scope of the *development* or is not in *substantial conformance* with the approved permit requires an amendment to the approved permit or an application for a new permit, except as follows:

- (1) Industrial development in IP, IL and IH zones may request a Process Two Neighborhood Development Permit to modify approved *development permit* requirements or design guidelines instead of being required to amend the applicable *development permit* via a higher decision process.

**Comment [a3j1]:** This refers to industrial development that meets the definition of industrial development in section 131.0112(e).

- (2) The exception in Section 126.0113(a)(1) does not apply to industrial development within 1,000 feet of a residential development.

(b) through (e) [No change.]

(f) [See Issue #39]

#### **ISSUE #15: Process for Underground Encroachments**

##### **§126.0502 When a Site Development Permit is Required**

(a) through (d) [No change.]

- (e) A Site Development Permit decided in accordance with Process Five is required for the following types of *development*.

(1) through (4) [No change.]

- (5) Development in accordance with ~~section~~ Section 129.0710(c) that includes major ~~underground or~~ overhead *structures* which extend into the *public right-of-way* beyond the ultimate curb line, major underground structures which extend into the public right-of-way to a point less than 3 feet behind the ultimate or existing curb line or less than 3 feet below the grade of the ultimate or existing curb, or other *encroachments* which, in the opinion of the City Manager, are of sufficient public interest to warrant City Council approval.

##### **§129.0710 How to Apply for a Public Right-of-Way Permit**

An application for a Public Right-of-Way Permit shall be submitted in accordance with ~~sections~~ Sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual. A *development permit* or other discretionary approval is required prior to issuance of a Public Right-of-Way Permit for the following:

- (a) If the proposed *encroachment* involves construction of a privately owned *structure* or facility into the *public right-of-way* dedicated for a *street* or an *alley*, and where the *applicant* is the *record owner* of the underlying fee title, a Neighborhood Development Permit is required in accordance with ~~section~~ Section 126.0402 (j) except for the following which are subject to approval in accordance with Process One by the City Engineer:

(1) through (8) [No change.]

**(9)** Encroachment of a permanent underground *structure* for a use permitted by the underlying base zone where the top of the *structure* is located at least 3 feet below the ultimate or existing grade of the curb and where the underground *structure* encroaches into the *public right-of-way* no closer than 3 feet to the ultimate or existing curb line.

(b) If the proposed *encroachment* is erected, placed, constructed, established or maintained in the *public right-of-way* when the applicant is not the *record owner* of the property on which the *encroachment* will be located, a Site Development Permit is required in accordance with ~~section~~ **Section** 126.0502(d)(7), except for the following:

(1) *Encroachments* listed in Section 129.0710(a)(4) through ~~(8)~~ **(9)**.

(2) through (4) [No change.]

(c) If the proposed *encroachment* includes ~~underground or~~ overhead *structures* which extend into the *public right-of-way* beyond the ultimate curb line, **major underground structures which extend into the *public right-of-way* to a point less than 3 feet behind the ultimate or existing curb line or less than 3 feet below the ultimate or existing grade of the curb,** or other *encroachments* which, in the opinion of the City Manager, are of sufficient public interest to warrant City Council approval, a Process Five Site Development Permit shall be obtained in accordance with ~~section~~ **Section** 126.0502(e) prior to the issuance of a Public Right-of-Way Permit. **Encroaching underground structures shall be designed in accordance with Section 143.0265.**

#### **§143.0302 When Supplemental Neighborhood Development Permit and Site Development Permit Regulations Apply**

This division applies to any development proposal for which a Neighborhood Development Permit or Site Development Permit is required as described in Sections 126.0402 and 126.0502, in accordance with Table 143-03A.

Add row to Table 143-03A for Underground structures Site Development Permit Process Five.

#### **§143.0365 Supplemental Site Development Permit Regulations for Encroaching Underground Structures**

The following regulations apply to Site Development Permits required for permanent underground *structures* that encroach in the *public right-of-way* to a point within 3 feet behind the ultimate or existing curb line and beyond in accordance with Section 126.0502(e)(5).

(a) Permanent underground *structures* shall generally be located as follows:

- (1) At least 5 feet below the *street* from the ultimate or existing curb line to a point 8 feet beyond the curb line;
  - (2) At least 15 feet below the *street* to a point 5 feet from the center line; and
  - (3) At least 30 feet below the *street* in the 5 foot area on each side of the center line.
  - (4) An exception may be permitted for the construction of access ramps to underground *structures* where designed in accordance with Section 143.0365(b).
- (b) Access ramps to permanent underground *structures* shall generally be designed as follows:
- (1) Ramps shall not extend farther than 8 feet beyond the ultimate or existing curb line.
  - (2) Ramps shall maintain adequate space along the property frontage for the installation of utility facilities as may be required for utility service.
  - (3) Ramps shall only be constructed in front of the property to be served.
  - (4) Ramps require special engineering consideration and should be avoided as follows:
    - (A) On two-way *streets* with 52-foot curb-to-curb widths or less, and major portions of the following *streets* which serve as one-way pairs within the downtown area: "A" and Ash Streets, "F" and "G" Streets, First and Front Streets, and 10<sup>th</sup> and 11<sup>th</sup> Avenues;
    - (B) On major transit routes or where dual turn lanes may ultimately be required; and
    - (C) Other locations deemed undesirable by the City Engineer.
- (c) *Structures* shall be constructed within the limits of the reversionary rights of the property unless specific approval is granted by the *record owner* of the fee title. If the owner of the fee title is the City, the Council may approve a lease agreement for area occupied by the *structure* at an amount commensurate with the use.
- (d) An Encroachment Maintenance and Removal Permit shall be obtained as a condition of approval in accordance with Section 129.0715.

#### **ISSUE #16: Previously Conforming Regulations**

##### **§127.0102 General Rules for Previously Conforming Premises and Uses**

The following general rules apply to all *previously conforming premises* and uses:

- (a) *Previously conforming premises* or uses must have been established in compliance with all permit requirements and must have been lawful until a change in the applicable zoning regulations made the *premises* or uses *previously conforming*.
- (b) The property owner or person asserting *previously conforming* rights for a *premises* or use has the burden to provide the City Manager with sufficient documentation to establish the existence of the *previously conforming premises* or use.
- ~~(c)~~ Documentation of *market value* shall be in accordance with procedures established by the City Manager.
- ~~(d)~~ (c) *Previously conforming premises* and uses that comply with the provisions of this division may continue to exist and operate unless an amortization period is specified elsewhere in the Municipal Code.
- ~~(e)~~ (d) Sale or transfer of the property or change of ownership does not terminate rights to the *previously conforming premises* or use, unless the owner agrees to such a condition as part of a permit or administrative or judicial order.
- ~~(f)~~ (e) *Previously conforming premises* and uses are subject to all other regulations and any *development permits* that may otherwise be required by the Land Development Code. The required review process shown in Tables 127-01A and 127-01B, and described in Sections 127.0103 through 127.0108, 127.0109, pertains only to the review required for the *previously conforming premises* or use aspects of a proposed development. Proposed *development* sites located in the Coastal Overlay Zone or other geographic overlay zones are also subject to the regulations of, and may require *development permit* review in accordance with, those overlay zones.
- (f) The *previously conforming* regulations do not grant any deviation from the height regulations of the Coastal Height Limit Overlay Zone or any other height limit overlay zone.
- (g) If a *previously conforming premises* or use is brought into conformance by a change in use or new *development*, the *previously conforming* status is terminated and the *premises* or use cannot revert to a *previously conforming* status. A temporary discontinuance of operations in accordance with Section 127.0108(d) shall not be considered to have brought the *previously conforming* use into conformance or to have terminated the *previously conforming* status. See Section 127.0108 for additional regulations regarding abandonment of *previously conforming* uses.

- (h) Regulations for *premises* that have *previously conforming* parking are found in Section 142.0510(d).
- (i) Regulations for *premises* that have *previously conforming* landscaping are found in **Section** 142.0410.
- (j) Regulations for *premises* in the Airport Land Use Compatibility Overlay Zone that were legally established in an airport influence area prior to adoption of an Airport Land Use Compatibility Plan, or amendment thereto, are located in Section 132.1535.

**§127.0103 Review Process for Previously Conforming Premises and **Previously Conforming** Uses**

The required review process for different types of proposed *development* or activity, **varies** based on the *previously conforming* category, **aspects of the development**, such as existing *structural envelope*, *density*, and uses are **as** shown in Tables 127-01A through **and** 127-01**B**. If the proposed *development* includes more than one *previously conforming* category, all corresponding regulations, as described in Sections 127.0104 through 127.0108 **127.0109** apply.

**Table 127-01A**  
**Review Process for Previously Conforming Structural Envelope**

<b>Type of Development Proposal</b>	<b>Applicable Sections</b>	<b>Required Development Permit/Decision Process</b>
Maintenance, repair or alteration (less than or equal to 50% of market value of entire structure or improvement) that does not expand the structural envelope.	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of market value of entire structure or improvement) that does not expand the structural envelope.	127.0104	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for residential structures or for nonresidential structures when the cost of reconstruction is less than 50 percent of market value.	127.0105(a), (b) and (e)	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential structures when the cost of	127.0105(c) and (d)	NDP/Process 2

reconstruction is greater than 50 percent of market value.		
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a), (b) and (c).	CP/Process 1
Expansion/enlargement where new construction requests a reduction of up to 20% from required setbacks.	127.0106(c).	NDP/Process 2

**Table 127-01A**  
**Review Process for Previously Conforming Structural Envelope**

<u>Type of Development Proposal</u>	<u>Applicable Sections</u>	<u>Required Development Permit/Decision Process</u>
<u>Maintenance, repair, alteration, or replacement of a structure with previously conforming structural envelope</u>		
<u>Maintenance, repair, alteration, or replacement that is outside the coastal zone or that is exempt from a Coastal Development Permit in accordance with Section 126.0704(b)</u>	<u>127.0104</u>	<u>CP/Process One</u>
<u>Maintenance, repair, alteration, or replacement that requires a Coastal Development Permit (because it does not meet the permit exemptions in Section 126.0704(b))</u>	<u>126.0704</u> <u>127.0104</u>	<u>NDP/Process Two</u>
<u>Reconstruction (following fire, natural disaster, act of the public enemy) of a structure with previously conforming structural envelope</u>		
<u>Reconstruction that meets specified criteria in Section 127.0105(b)</u>	<u>127.0105</u>	<u>CP/Process One</u>
<u>Reconstruction that does not meet criteria for Process One approval</u>	<u>127.0105</u>	<u>NDP/Process Two</u>
<u>Expansion/enlargement of a structure with previously conforming structural envelope, or of a structure on a premises with previously conforming density</u>		
<u>Where proposed expansion/enlargement conforms with current development regulations for setbacks, floor area ratio, and structure height and does not increase the level of non-conformity</u>	<u>127.0106</u>	<u>CP/Process One</u>

**Comment [a3j2]:** A CDP is required for structures with shoreline protective devices.

**Comment [a3j3]:** The existing requirement for Process Two NDP based on market value was an issue for reconstruction of structures impacted by various wildfires.

**Comment [a3j4]:** Process one applies where the new structure does not exceed the gross floor area or structure height of the destroyed structure by more than 10 percent; and the new structure is sited in generally the same location as the destroyed structure.

**Comment [a3j5]:** Examples of coastal areas where a more restrictive policy could cause unintended consequences: liberty station, la jolla shores, point loma, ocean beach, mission beach, pacific beach, torrey pines

Expansion or enlargement of a <i>previously conforming multiple dwelling unit</i> or non-residential structure as necessary to incorporate required public exits or fire walls that bring the existing structure into compliance with the California Building Code or California Fire Code	127.0106	CP/Process One
Expansion or enlargement of a <i>previously conforming structure</i> that meets specified criteria in Section 127.0106(b)	127.0106	NDP/Process Two

(b) — *Previously Conforming Density*

**Table 127-01B**  
**Review Process for Previously Conforming Density**

Type of Development Proposal	Applicable Sections	Required Development Permit/Decision Process
Maintenance, repair or alteration (less than or equal to 50% of market value of entire structure or improvement) that does not expand the structural envelope.	127.0104.	CP/Process 1
Maintenance, repair or alteration (greater than 50% of market value of entire structure or improvement) that does not expand the structural envelope.	127.0104.	NDP/Process 2
Reconstruction (following fire, natural disaster, act of the public enemy) for residential structures or for nonresidential structures when the cost of reconstruction is less than 50 percent of market value.	127.0105(a), (b) and (c)	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential structures when the cost of reconstruction is greater than 50 percent of market value.	127.0105(c) and (d)	NDP/Process 2
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a) and (b).	NDP/Process 2



Expansion/enlargement where new construction requests a reduction of up to 20% from required setbacks.	127.0106(c).	NDP/Process 2
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(e)(b) Previously Conforming Use

**Table 127-01C**  
**Review Process for Previously Conforming Use**

Type of Development Proposal	Applicable Sections	Required Development Permit/Decision Process
Maintenance, repair or alteration (less than or equal to 50% of market value of entire structure or improvement) that does not expand the structural envelope.	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of market value of entire structure or improvement) that does not expand the structural envelope.	127.0104	NDP/Process 2
Reconstruction (following fire, natural disaster, act of the public enemy).	127.0105	CP/Process 1 <sup>(1)</sup> NDP/Process 2 <sup>(2)</sup>
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a) and (b)	NDP/Process 2 <sup>(3)</sup>
Expansion/enlargement where new construction requests a reduction of up to 20% from required setbacks.	127.0106(c)	NDP/Process 2 <sup>(3)</sup>
Change to another previously conforming use within the same use category.	127.0107	CP/Process 1
Operating a previously conforming use, including resumption of previously conforming use up to 2 years after discontinuance.	127.0108(a) and (c)	CP/Process 1
Resumption of a previously conforming use after 2 years discontinuance.	127.0108(b) and (c)	NUP/Process 2
Increase in floor area to a previously conforming use (less than or equal to 20% of gross floor area of the existing structure).	127.0109	NUP/Process 2 <sup>(3)</sup>

**Table 127-01B**  
**Review Process for Previously Conforming Use**

<u>Type of Development Proposal</u>	<u>Applicable Sections</u>	<u>Required Development Permit/Decision Process</u>
<u>Maintenance, repair or alteration of a structure containing a previously conforming use</u>		
<u>Removal of less than 50 percent of the exterior walls of a structure containing a previously conforming use</u>	<u>127.0104</u>	<u>CP/Process One</u>
<u>Removal of 50 percent or more of the exterior walls of a structure containing a previously conforming use</u>	<u>127.0104</u>	<u>NDP/Process Two</u>
<u>Reconstruction (following fire, natural disaster, act of the public enemy) of a structure associated with a previously conforming use and resumption of the use</u>		
<u>Reconstruction that meets specified criteria in Section 127.0105(b)</u>	<u>127.0105</u>	<u>CP/Process One</u>
<u>Reconstruction that does not meet criteria for Process One approval</u>	<u>127.0105</u>	<u>NDP/Process Two</u>
<u>Expansion/enlargement of a previously conforming use</u>		
<u>Increase in floor area to a previously conforming use (up to 20 percent expansion of gross floor area of the existing structure or up to the maximum floor area ratio of the underlying base zone, whichever is less)</u>	<u>127.0109</u>	<u>NUP/Process Two</u>
<u>Operation changes involving previously conforming uses</u>		
<u>Change to another previously conforming use within the same use category</u>	<u>127.0107</u>	<u>CP/Process One</u>
<u>Operating a previously conforming use, including resumption of previously conforming use up to 2 years after discontinuance</u>	<u>127.0108</u>	<u>CP/Process One</u>
<u>Resumption of a previously conforming use after 2 years discontinuance</u>	<u>127.0108</u>	<u>NUP/Process Two</u>

Footnotes to Table 127-01C:

- (+) Applies to reconstruction of *previously conforming structures*, with *previously conforming density* or *previously conforming residential uses* with no limitation on cost. Applies to partial reconstruction of *structures* with *previously conforming nonresidential uses* (less than or equal to 50 percent of *market value* of entire *structure* or improvement)
- (+) Applies to reconstruction of *previously conforming nonresidential uses*, when the cost of reconstruction is greater than 50 percent of *market value*
- (+) Findings of fact for this permit shall include the presumption that expansion of the following *previously conforming uses* would be detrimental to the public health, safety, and welfare: industrial uses in residential zones, auto repair or dismantling uses in residential zones and any use in a zone that would require a Conditional Use Permit in accordance with Section 126.0303.

**§127.0104 Maintenance, Repair, ~~or~~ Alteration, or Replacement of Previously Conforming Structures**

- (a) Maintenance, repair, ~~or~~ alteration, or replacement of a *previously conforming structure*, with a *previously conforming structural envelope* is permitted in accordance with Process One, where the new construction would not expand beyond the existing *structural envelope*, is subject to the review procedures required for conforming *structures* except as described in Section 127.0104(b), unless the proposed *development* requires a Coastal Development Permit because it does not meet the permit exemptions in Section 126.0704(b).
- (b) Maintenance, repair, ~~or~~ alteration, or replacement of a *structure with a previously conforming structural envelope* *structure*, containing *previously conforming density* or a *previously conforming use*, where the cost of the new construction would be greater than 50 percent of the *market value* of the existing *structure*, and the new construction would not expand beyond the existing *structural envelope*, requires a Neighborhood Development Permit. shall require a Neighborhood Development Permit in accordance with Process Two for proposed *development* that requires a Coastal Development Permit because it does not meet the permit exemptions in Section 126.0704(b).
- (c) Maintenance, repair, alteration, or replacement of a *dwelling unit*, or *structure* that includes a *dwelling unit* or *dwelling units*, that make the *premises previously conforming for density* is permitted in accordance with Process One.
- (d) Maintenance, repair, alteration, or replacement of a *non-residential structure* containing a *previously conforming use* is permitted in accordance with Process One if the proposed *development* would retain 50 percent or more of the exterior walls of the *structure*. If the proposed *development* would retain less than 50 percent of the exterior walls of the *previously conforming structure*, the proposed

development shall require a Neighborhood Development Permit in accordance with Process Two.

**§127.0105 Reconstruction of Previously Conforming Structures Following Fire, Natural Disaster, or Act of the Public Enemy**

- (a) The reconstruction provisions of ~~this section~~ Section 127.0105 apply only to the rebuilding of a ~~previously conforming structure~~ that has been destroyed, in whole or in part, as a result of fire, natural disaster, or act of the public enemy; where prior to the event that caused destruction, the structure met one or more of the following conditions:
- (1) The structure had a previously conforming structural envelope;
  - (2) The structure was a dwelling unit, or a structure that included a dwelling unit or dwelling units, that made the premises previously conforming for density; or
  - (3) The structure contained a previously conforming use.
- (b) ~~Reconstruction of any previously conforming structure, including a structure with previously conforming density or a previously conforming residential use, is subject to the same review procedures required for conforming structures.~~ Reconstruction of a previously conforming structure described in Section 127.0105(a) is permitted in accordance with Process One as follows:
- (1) Reconstruction of a non-residential structure containing a previously conforming use where less than 50 percent of the structure's exterior walls were destroyed; or
  - (2) Reconstruction of a structure with a previously conforming structural envelope or previously conforming density where:
    - (A) The new structure would not exceed the gross floor area or structure height of the destroyed structure by more than 10 percent; and
    - (B) The new structure would be located in generally the same location as the destroyed structure or in a location that would reduce the level of non-conformity.
- (c) ~~Partial reconstruction of a structure containing a previously conforming nonresidential use is subject to the review procedures required for conforming~~

~~structures, if the cost of the reconstruction is less than or equal to 50 percent of the market value of the structure prior to destruction.~~

- (c)(d) Reconstruction of a ~~structure containing a previously conforming nonresidential use~~ requires a Neighborhood Development Permit if the cost of the reconstruction is greater than 50 percent of the ~~market value of the structure prior to the destruction~~. in accordance with Process Two where the proposed development does not meet the criteria for Process One approval in accordance with Section 127.0105(b).
- (d) In the coastal overlay zone, previously conforming rights are not retained for a structure with shoreline protective devices if more than 50 percent of the exterior walls are destroyed. In such cases, reconstruction of a structure with a shoreline protection device is subject to a Coastal Development Permit and the regulations applicable to conforming development.
- (e) ~~This section, or any Neighborhood Development Permit issued for reconstruction,~~ Section 127.0105 does not exempt any person from any requirement to obtain other applicable *development permits* and does not grant any deviation from the height limit regulations of the Coastal Height Limit Overlay Zone or any other applicable height limit overlay zone.
- (f) All *construction permits* that would be required for conforming *premises* or uses must be obtained for reconstruction of *previously conforming premises* or uses pursuant to Section 127.0105.

**§127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures On a Premises with Previously Conforming Density**

- (a) Proposed expansion or enlargement of a structure with a previously conforming structural envelope ~~is subject to the procedural requirements for conforming structures if the existing density and use comply with all applicable development regulations of the Land Development Code and if the new construction will comply with all applicable development regulations.~~ or of a structure on a premises with previously conforming density is permitted in accordance with Process One as follows:
  - (1) Expansion or enlargement where all new construction conforms with current development regulations for setbacks, floor area ratio, and structure height and does not increase the level of non-conformity.
  - (2) Expansion or enlargement of a previously conforming multiple dwelling unit or nonresidential structure is permitted as necessary to meet public

safety requirements of the California Building Code or California Fire Code for a conforming use as long as the need per the California Building Code or California Fire Code is not a situation created by the *applicant* due to the proposed expansion or enlargement.

- (b) Proposed expansion or enlargement of a *structure with a previously conforming structural envelope*, where the existing *previously conforming structure* does not comply with applicable zoning regulations as to *density* or use requires or of a *structure on a premises with previously conforming density* that does not meet the provisions for Process One in accordance with Section 127.0106(a), may nevertheless still be approved with a Neighborhood Development Permit in accordance with Process Two if the proposed *development* meets all of the following criteria:
- (1) The proposed expansion or enlargement does not encroach into a front yard and does not extend to within 10 feet of the front yard setback line;
  - (2) The proposed expansion or enlargement complies with the floor area ratio and maximum structure height of the underlying base zone;
  - (3) The proposed expansion or enlargement conforms to the setback observed by the existing structure;
  - (4) The proposed expansion or enlargement does not exceed a maximum 15 foot length in any required side or rear yard;
  - (5) The proposed expansion or enlargement would not result in a total structure length within the required yard that is greater than 50 percent of the length of the adjacent property line; and
  - (6) No expansion of the number of dwelling units is permitted beyond what is allowed in accordance with the underlying base zone.
- (c) Proposed expansion or enlargement of a *previously conforming structural envelope* where the expansion would comply with regulations, but which proposes a reduction less than or equal to 20 percent from a required setback, requires a Neighborhood Development Permit.
- (d)(c) Within the Coastal Overlay Zone, if the proposal involves the demolition or removal of 50 percent or more of the exterior walls of an existing *structure* *structure*, the *previously conforming previously conforming* rights are not retained for the new *structure structure*.

**Comment [a3j6]:** This limitation currently applies just to expansion or enlargement of a previously conforming structures.

~~(e)~~ (d) Proposed expansion or enlargement or a change in use of a *previously conforming large retail establishment* is subject to a Process One Construction Permit and the applicable supplemental regulations in Section 143.0355(e) except as described below. Proposed expansion or enlargement or a change in use of a *large retail establishment* that would result in a *structure* 100,000 square feet or greater *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.

**§127.0107 Change in Use of a Previously Conforming Use**

Comment [a3j7]: No change proposed

- (a) A change in use from a *previously conforming* use to another use within the same use category of the Use Regulations Tables of Chapter 13, Article 1, outside the Coastal Overlay Zone, is considered a change of use of equal intensity and retains the *previously conforming* rights for the new use. A change of use from a *previously conforming* use to a use in another use category or to a separately regulated use category of the Use Regulations Tables of Chapter 13, Article 1, is not allowed.
- (b) Within the Coastal Overlay Zone, if a change in use from a *previously conforming* use to another use within the same use category of the Use Regulation Tables of Chapter 13, Article 1 involves any intensification of use, the *previously conforming* rights are not retained for the new use. For the purposes of Section 127.0107, intensification of use means a change in the use of a *lot* or *premises* which, based on the provisions of the applicable zone, requires more off-street parking than the most recent legal use on the *premises*.
- (c) A change in the number of business licenses issued for the same use within the same square footage is not considered an intensification of use.

**§127.0108 Abandonment of Previously Conforming Uses**

- (a) A *previously conforming* use may continue to operate or may resume operations if discontinued for a period of less than 2 consecutive years, except where indicated in Section 127.0108(c). Resumption of operations within 2 years is subject to the review procedures for conforming uses.
- (b) It is unlawful to reinstate any *previously conforming* use after the use has been discontinued for a period of 2 or more consecutive years, unless the property owner has obtained a Neighborhood Use Permit. Discontinuance of the use for a period of 2 or more consecutive years creates a presumption in favor of abandonment, against which the owner or person asserting *previously conforming* rights may offer evidence.

- (c) Resumption of operations pursuant to Section 127.0108 (a) or (b) is prohibited in circumstances where a *previously conforming* use was brought into conformance by a change in use to a conforming use. In such cases, the *previously conforming* status is terminated and future *development* cannot revert to that *previously conforming* status. A *previously conforming* use can maintain vested rights during construction in accordance with Section 127.0108(d) without being considered to have been abandoned.
- (d) If the *previously conforming* use is discontinued temporarily while repairs, remodeling, or major alterations of the *structure* are under construction, maintenance of an active *construction permit* and continuance of the Business Tax Certificate constitutes conclusive evidence that the use has not been abandoned during the construction. A temporary discontinuance of operations in accordance with Section 127.0108(d) shall not be considered to have brought the *previously conforming* use into conformance or to have terminated the *previously conforming* status.

#### **§127.0109 Expansion of a Previously Conforming Use**

- (a) A 20 percent or less ~~gross floor area~~ gross floor area expansion of a ~~structure~~ with a *previously conforming* use requires a Neighborhood Use Permit in accordance with Process Two.
- (b) When making the *findings* for a Neighborhood Use Permit for the proposed expansion of a *previously conforming* use, the following uses are conclusively presumed to be detrimental to public health, safety, and welfare where located in residential zones:
  - (1) ~~Industrial uses in residential zones~~ Hazardous waste facilities subject to Section 141.1001 or 141.1002;
  - (2) Very Heavy Industrial Uses subject to Section 141.1007;
  - (3) Wrecking and Dismantling of Motor Vehicles subject to Section 141.1008; and
  - (4) Commercial and personal vehicle repair and maintenance facilities that meet the use category description in Section 131.0112(a)(8)(A) or (C) in residential zones; and
  - (3) ~~Any use that requires a Conditional Use Permit in the applicable zone in accordance with Section 126.0303.~~



**§127.0110 Previously Conforming Density**

- (a) For the purpose of Chapter 12, Article 7, Division 1, *previously conforming density* shall be regulated in accordance with the same regulations and permit process applicable to *previously conforming structural envelope*. The regulations applicable to *previously conforming* uses shall not apply to *multiple dwelling unit* development in a *single dwelling unit* zone.
- (b) The *previously conforming* regulations shall in no way be interpreted to allow for additional *dwelling units* to be added to a *premises* with *previously conforming density*.

**Comment [a3j8]:** *Previously conforming density* means the circumstance where a residential *development* is currently an allowed use in the zone and was constructed with a lawful number of units, but due to a change in the zone or zoning regulations, now has a greater number of units than is allowed in the zone.

**ISSUE #17: CEQA Document Processing Requirements**

**§128.0209 When a Previous Environmental Document May Be Used**

- (a) A previously certified EIR or Negative Declaration, including any supplement or addendum, may be used when changes in the project or circumstances have occurred, unless the Planning Director determines that one or more of the situations identified in State CEQA Guidelines, Section 15162, exist.
- ~~(b) If a previously certified document is to be used, the Planning Director shall provide the decision making body with an explanatory cover letter stating that none of the conditions specified in State CEQA Guidelines, Section 15162, exists.~~
- ~~(b)(c)~~ An EIR prepared in connection with an earlier project may be used for a later project, if the circumstances of the projects are essentially the same and are consistent with the State CEQA Guidelines, Section 15153.

**§128.0306 Required Time Periods for Public Review and Comment of Draft Environmental Documents**

Other public agencies and members of the public shall have the following time periods to review and comment on draft environmental documents:

- ~~(a) The public review period for~~ Negative Declarations, Mitigated Negative Declarations, ~~and Environmental Impact Reports, and Addenda to environmental documents shall be consistent with that established by CEQA and the State CEQA Guidelines.~~

~~The public review period shall be consistent with that established by CEQA and the State CEQA Guidelines.~~

- ~~(b) Addenda~~

~~All addenda for environmental documents certified more than 3 years before~~

the date of application shall be distributed for public review for 14 calendar days along with the previously certified environmental document. However, this review period for the addenda shall not extend the time for action beyond that required under law, and the failure to allow review of addenda, or allow sufficient time to review addenda, shall not invalidate any discretionary approval based upon an addendum under review.

#### **§128.0310 Final Environmental Document Preparation, Distribution and Public Review**

A final environmental document consisting of all information required by CEQA and the State CEQA Guidelines and any other information the Planning Director may add shall be prepared and distributed made available to the public and decision makers for review before the first public hearing or discretionary action on the project.

##### **(a) Final Environmental Document Distribution**

~~At least 14 calendar days before the first public hearing or discretionary action on the project, the~~ The Planning Director shall make all final environmental documents, ~~including EIR Candidate Findings and Statements of Overriding Consideration if applicable,~~ available to the public and decision makers and shall also ~~mail~~ make copies of final environmental documents available to the officially recognized community planning groups and members of the public who commented on the draft document before the first public hearing or discretionary action on the project. Failure to provide this ~~14 calendar day~~ review period shall not be treated as a procedural defect and shall not preclude discretionary action on the project when necessary to avoid conflict with time limits imposed by law. The Planning Director shall provide a final EIR to any public agency that commented on the draft consistent with CEQA.

##### **(b) [No change.]**

#### **§128.0312 Adoption of Candidate Findings and Statement of Overriding Considerations by the Decision Maker**

Before approving a project for which the final EIR identifies one or more significant effects, the decision maker shall adopt the required *findings* in accordance with the State CEQA Guidelines, Section 15091. When the decision to approve the project allows the occurrence of significant effects that are identified in the final EIR but are not at least substantially mitigated, the decision maker shall make a statement of overriding considerations stating the specific reasons to support the decision based on the final EIR and other information in the record in accordance with the State CEQA Guidelines, Section 15093.

##### **(a) [No change.]**

##### **(b) Preparation of ~~Adopted~~ Candidate Findings and Statement of Overriding Considerations**

The ~~adopted~~ candidate findings and the statement of overriding considerations shall be in writing and shall be based on the entire record of proceedings.

(c) Availability of Candidate *Findings* and Statement of Overriding Considerations

Where candidate *findings* and a statement of overriding considerations are required in accordance with Section 128.0312, the Planning Director shall make them available to the public and decision makers before the first public hearing to consider approval of the project.

**ISSUE #18: When a Public Right-of-Way Permit is Required**

**§129.0702 When a Public Right-of-Way Permit Is Required**

- (a) A Public Right-of-Way Permit is required for the following unless otherwise exempt under Section 129.0703:
  - (1) The ~~private~~ construction of *public improvements* by a private or public entity other than the City;
  - (2) through (4) [No change.]
- (b) [No change.]

**ISSUE #19: Qualifications to Prepare Plans and Perform Work in the Public Right-of-Way**

**§129.0720 Qualifications to Prepare Plans and Perform Construction Work in the Public Right-of-Way or Public Service Easement**

The preparation of plans for, and the construction of, work regulated by this division shall only be performed by persons with the following qualifications:

(a) through (e) [No change.]

(f) All construction work ~~required~~ **regulated** by this division shall be performed by a contractor licensed by the State of California ~~except for~~ **with the following exceptions:**

- (1) ~~any~~ **Any** person owning property that is or will be that person's primary residence may perform *grading* on that property.
- (2) ~~any~~ **Any** construction work authorized by a Public Right-of-Way Permit as a result of application by a *public utility* may be performed by the *public utility*.

**ISSUE #20: Applying OP Zone to City Parkland Prior to Dedication**

**§131.0202 Purpose of the OP (Open Space--Park) Zones**

- (a) The purpose of the OP zones is to be applied to *public parks* and facilities, ~~once they are dedicated as park land~~ pursuant to City Charter Section 55 in order to promote recreation and facilitate the implementation of *land use plans*. The uses permitted in these zones will provide for various types of recreational needs of the community.
- (b) [No change.]

**ISSUE #21: Clarification of Street Light Requirement**

**§142.0670 Standards for Public Improvements**

(a) through (d) [No change]

(e) Street lights **are a public improvement required as a condition of approval for a new subdivision map that** shall be constructed in accordance with the standards established in the Land Development Manual.

(f) [No change.]

**ISSUE #22: Exemptions from Historic Resources Site Survey**

**§143.0212 Need for Site-Specific Survey and Determination of Location of Historical Resources**

- (a) The City Manager shall determine the need for a site-specific survey for the purposes of obtaining a *construction permit* or *development permit* for *development* proposed for any parcel containing a *structure* that is 45 or more years old and not located within any area identified as exempt in the Historical Resources Guidelines of the Land Development Manual or for any parcel identified as sensitive on the Historical Resource Sensitivity Maps. The following *development* does not have the potential to adversely impact historical resources and shall be exempt from the requirements of Section 143.0212:
- (1) Interior *development* and any modifications or repairs that are limited in scope to an electrical or plumbing/mechanical permit ~~shall be exempt from the requirement to obtain a site specific survey prior to approval of the applicable *construction permit*~~ where the *development* would not include a change to the exterior of existing *structures*.;
  - (2) In kind roof repair and replacement ~~shall be exempt from the requirement to obtain a site specific survey prior to approval of the applicable *construction permit*~~.;
  - (3) In kind foundation repair and replacement; and
  - (4) Construction of swimming pools in the rear yard, except on properties that have a likelihood of containing archaeological sites and require a survey in accordance with Section 143.0212(b).
- (b) [No change.]
- (c) The City Manager shall determine the need for a site-specific survey within 10 *business days* of application for a *construction permit* or within 30 calendar days of application for a *development permit*. A site-specific survey shall be required when the City Manager determines that a *historical resource* may exist on the parcel, and if the *development* proposes a substantial alteration consistent with SDMC 143.0250(a)(3). If the City Manager determines that a site-specific survey is not required within the specified time period, a permit in accordance with Section 143.0210 shall not be required.
- (d) [No change.]

#### **USE AMENDMENTS:**

#### **ISSUE #23: Manufacturing (Light vs Heavy)**

#### **§131.0112 Descriptions of Use Categories and Subcategories**

- (a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use

regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).

(1) through (5) [No change.]

(6) Commercial Services Use Category

(7) through (8) [No change.]

(9) [See Issue #25.]

(10) Industrial Use Category

This category includes uses that produce goods from extracted and raw materials or from recyclable or previously prepared materials, including the design, storage, and handling of these products and the materials from which they are produced. The industrial subcategories are:

- (A) Heavy Manufacturing — Uses that process, ~~fabricate, or assemble, or~~ treat materials ~~for the fabrication of large base sector products. Assembly of large equipment and machines is included in this~~ using large outdoor equipment such as cranes and large tanks to produce unpackaged bulk products such as steel, paper, lumber, fertilizer, or petrochemicals. ~~This subcategory as well as~~ includes manufacturing uses that typically produce disturbing noise, dust, or other pollutants capable of harming or annoying adjacent uses.
- (B) Light Manufacturing — Uses that process, fabricate, assemble, treat, or package finished parts or products without the use of explosives or unrefined petroleum materials. ~~(This subcategory does not include the assembly of large equipment and machinery.)~~ This category also applies to the manufacturing of a wide variety of products including, but not limited to the manufacturing of food, beverages, durable goods, machinery, and equipment.

(C) through (F) [No change.]

(b) [No change.]

#### **§131.0623 Additional Use Regulations of Industrial Zones**

The additional use regulations identified in this section are applicable to uses where indicated in Table 131-06B.

(a) [No change.]

- (b) [See Issues #27 and 29]
- (c) through (d) [No change.]
- (e) Light manufacturing and assembly uses in the IP-1-1 zone are limited to the following:
  - (1) through (5) [No change.]
  - (6) Manufacturing of biological, biomedical, and pharmaceutical products; ~~and~~
  - (7) Manufacturing of scientific, engineering, and medical instruments; and
  - (8) Beverage manufacturing and production.

#### **ISSUE #24: Tasting Rooms and Tasting Stores**

##### **§131.0112 Descriptions of Use Categories and Subcategories**

- (a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).
  - (1) through (5) [No change.]
  - (6) Commercial Services Use Category
 

This category includes uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment. The commercial services subcategories are:

    - (A) through (B) [No change.]
    - (C) Eating and Drinking Establishments — Uses that prepare or serve food or beverages for consumption on or off the *premises*.
    - (D) through (L) [No change.]
    - (M) Tasting rooms- Uses associated with a brewery, winery or distillery that offer alcoholic beverage tastings under specified conditions in accordance with a license issued by the California Department of Alcoholic Beverage Control, and that sell alcoholic beverages manufactured on the *premises* for on-site or off-site consumption. (This subcategory does not include retail tasting stores subject to Section 141.0507 that sell alcoholic beverages manufactured by the business at a different location off of the *premises*.)

**Comment [a3j9]:** Permitted in IP-2-1, IL, IH, IS, and CR-2-1. Not permitted in open space, Agricultural, Residential, commercial (except for CR-2-1), or in the IP-1-1 due to limit on allowed types of light manufacturing.

(7) through (8) [No change.]

(9) [See Issue #25.]

(10) [See Issue #23.]

Add new use categories to Ch 13 use tables.

#### **§141.0507 Retail Tasting Stores**

Retail tasting stores are branch locations affiliated with a licensed beer manufacturer, which sell or deliver alcoholic beverages that are manufactured by the business at a different location for consumption on or off of the *premises* of the retail tasting store. Section 141.0507 applies to any establishment for which a Duplicate Type 1 Beer Manufacturer License or a Duplicate Type 23 Small Beer Manufacturer License has been obtained from, or for which an application has been submitted to, the California Department of Alcoholic Beverage Control.

Retail tasting stores are permitted by right in the zones indicated with a “P” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), and may be permitted with a Neighborhood Use Permit decided in accordance with Process Two in the zones indicated with a “N” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) Off-street parking shall be provided in accordance with Section 142.0530 Table 142-05E (Parking Ratios for Retail Sales, Commercial Services, and Mixed-Use Development).
- (b) In CN zones and on properties abutting residentially zoned property, retail tasting stores shall not operate between the hours of midnight and 6:00 a.m. Hours may be further limited as appropriate for the location.
- (c) Section 141.0507 does not apply to tasting rooms that are an *accessory use* to a licensed beer manufacturer.

**Comment [a3j10]:** This type of ABC license (Duplicate license for beer manufacturer) is issued “forthwith” (no public notice other than posting of notice on window). It prohibits manufacturing of beer on premises. Minors under 21 are allowed; and a tasting room is allowed; but the branch location can’t sell other products than their own. They are allowed to deliver their beer products from the branch site.

**Comment [a3j11]:** Provides public review for duplicate license branches near residential that are otherwise avoiding public review via state law loophole.

**Comment [a3j12]:** Allow by right in commercial zones with no residential CC-2, CR-2-1, and in IL-3-1. Require NUP in CN, CR-1-1, CV, CO, and CC (except for CC-2). Not permitted in open space, Agricultural, Residential, CP, IL-1-1, IL-2-1, IP, IH.

#### **ISSUE #25: Distribution and Storage Uses**

##### **§131.0112 Descriptions of Use Categories and Subcategories**

- (a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).

(1) through (5) [No change.]

(6) [See Issue# 24]



(7) through (8) [No change.]

(9) ~~Wholesale, Distribution, and~~ Storage Use Category

This category includes uses that provide ~~for the~~ and distribute ~~distribution and storage of~~ goods ~~in large quantities, especially to retail sales establishments.~~ Long-term and short-term storage of commercial goods and personal items is included. The ~~wholesale, distribution, storage~~ subcategories are:

- (A) Equipment and Materials Storage Yards – Uses ~~related to~~ ~~engaged in the~~ outdoor storage of large equipment or products or large quantities of material.
- (B) Moving and Storage Facilities – Uses engaged in the moving ~~and storage~~ of household or office furniture, ~~personal items~~, appliances, and equipment ~~from one location to another, including the temporary storage of those same items.~~
- ~~(C) Warehouse — Uses engaged in long term and short term storage of goods in bulk as well as storage by individuals in separate storage compartments.~~
- ~~(D)(C)~~ Wholesale Distribution ~~Facilities~~ — Uses engaged in the ~~bulk commercial~~ storage and distribution of goods. Wholesale showrooms ~~with limited retail sales to the public~~ are also included.

(10) [See Issue #23.]

Amend Chapter 13 Use Tables accordingly.

§142.0530 Nonresidential Uses — Parking Ratios

**Table 142-05G**  
**Parking Ratios for Specified Non-Residential Uses**

Use	Parking Spaces Required per 1,000 Square Feet of Floor Area Unless Otherwise Noted (Floor Area Includes Gross Floor Area plus below Grade Floor Area, and Excludes Floor Area Devoted to Parking)		
	Required Automobile Parking Spaces <sup>(1)</sup>		
	Minimum Required Outside a Transit Area	Minimum Required Within a Transit Area <sup>(2)</sup>	Maximum Permitted

<b>Wholesale, Distribution, and Storage<sup>(4)</sup></b>			
<b>All wholesale, distribution and storage uses</b>	1.0 <sup>(5)</sup>	1.0 <sup>(5)</sup>	4.0
<b>Self Storage Facilities</b>	1.0 space/10,000 sq ft plus 3.3 space per 1,000 square foot of accessory office space	N/A	N/A

### **ISSUE #26: Assembly and Entertainment Uses, Including Churches**

Amend Ch 13 use tables accordingly

- Remove the “churches” and “assembly and entertainment” use categories.
- Add a new category for “Assembly uses”. Change all church and assembly entertainment uses with “P” to the new assembly use with “L”.
  - Not permitted in: OP-2-1, OC, OR, OF, AG, RE, RX, RS, RT; CP; IP, IL-1-1, IH, IBT
  - Limited use in: L<sup>(2)</sup> in OP-1-1; RM; CC; CN (not coastal), CR, CO, CV (not coastal); IL-2-1; IL-3-1; IS
  - Conditional: In AR zone keep as “C” (other assembly is currently not permitted)
- Address churches in SESDPDO, CUPDO, and LJSPDO.

### **§141.0602 Assembly and Entertainment Uses, Including Churches**

This use category applies to facilities that are designed to accommodate 25 people or more for assembly or entertainment and includes places of religious assembly. Assembly uses may be permitted as a limited use in accordance with Process One in zones indicated with a “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and subject to the regulations in Section 141.0602(a) and (b). Assembly uses may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and subject to the regulations in Section 141.0602(a) and (c).

#### **(a) General regulations**

##### **(1) Assembly and entertainment uses are not permitted:**

**(A) Within the MHPA;**

**(B) Within floodplains located in the Coastal Overlay Zone; or**

**(C) On a premises that is identified as Prime Industrial Land in a land use plan.**

##### **(2) Off-street parking shall comply with one of the following:**

- (A) 1 parking space per 3 seats in the assembly area;
- (B) 1 parking space per 60 inches of bench or pew seating space;
- (C) 30 per 1,000 square feet of assembly area if seating is not fixed; or
- (D) Other specified off-street parking standard in Table 142-05G applicable to the type of assembly and entertainment use.

- (3) The *premises* and adjacent *public right-of-way* shall be kept free of litter.
- (4) Auditoriums accessory to professional office or industrial *development* is not subject to the limitations in Section 141.0602.

(b) Limited use regulations

- (1) The facility shall be designed to accommodate a maximum of 300 people. Larger facilities are subject to approval of a conditional use permit in accordance with Section 141.0602(c).
- (2) Assembly facilities adjacent to residential *development* shall not operate between the hours of 10:00 p.m. and 6:00 a.m; except for churches and religious facilities; and events on Fridays and Saturdays which may run until 11:00 p.m.
- (3) Off-street parking for the facility must be accommodated on-site.

(c) Conditional use regulations

Conditions addressing the following issues may be imposed by the decision maker:

- (1) Hours of operation shall be limited so that neighboring *development* is not disturbed by noise and lights.
- (2) Structures shall be placed on the site so that larger or high-activity buildings are placed away from adjacent property with smaller *structures* and lower levels of activity.
- (3) Off-street parking areas shall be located away from adjacent residential property where possible to minimize disturbance to neighboring *development*.
- (4) Limitations on the maximum capacity, including limits on the intensity of *accessory uses*, to a level that is commensurate with the size of the site, the levels of intensity of surrounding *development*, and the capacity of *streets* serving the facility.

- (5) The design of the *structures* shall incorporate a variety of architectural elements that help to diminish building bulk.

**§142.0530 Nonresidential Uses — Parking Ratios**

**Table 142-05G  
Parking Ratios for Specified Non-Residential Uses**

Use	Parking Spaces Required per 1,000 Square Feet of <i>Floor Area</i> Unless Otherwise Noted ( <i>Floor Area</i> Includes <i>Gross Floor Area</i> plus below <i>Grade Floor Area</i> , and Excludes <i>Floor Area</i> Devoted to Parking)		
	Required Automobile Parking Spaces <sup>(1)</sup>		
	Minimum Required Outside a <i>Transit Area</i>	Minimum Required Within a <i>Transit Area</i> <sup>(2)</sup>	Maximum Permitted
<b>Institutional</b>			
Separately regulated uses			
<del>Churches and places of religious assembly</del>	<del>1 per 3 seats; or 1 per 60 inches of pew space; or 30 per 1,000 square feet assembly area if seating is not fixed</del>	85% of Minimum	N/A
<b>Commercial Services</b>			
Public assembly & entertainment			
Theaters	1-3 screens: 1 per 3 seats  4+ screens: 1 per 3.3 seats  Per assembly area if not fixed seats: 50.0	85% of Minimum	N/A
Health clubs	5.0  Clubs with Courts: 1 additional space per the maximum number of authorized players (Amateur Athletic Union) per court	85% of Minimum	N/A

Swimming pools	Commercial: 1 per 100 sq. ft. of pool surface area  Community: 1 per 175 sq. ft. of pool surface area	85% of Minimum	N/A
All other public assembly and entertainment	1 per 3 seats; 1 per 60 inches of bench or pew seating; or 30.0 if no fixed seats	85% of Minimum	N/A

**Footnotes For Table 142-05G**

- <sup>1</sup> Parking spaces for carpool vehicles and zero emissions vehicles are required in accordance with Section 142.0530(d). Bicycle parking is required in accordance with Section 142.0530(e).
- <sup>2</sup> *Transit Area*. The *transit area* minimum parking ratios apply in the *Transit Area* Overlay Zone (Chapter 13, Article 2, Division 10) and in the Urban Village Overlay Zone (Chapter 13, Article 2, Division 11).
- <sup>3</sup> In the beach impact area, one parking space per *guest room* or 5.0, whichever is greater.
- <sup>4</sup> Accessory Retail Sales, Commercial Services, and Office Uses. On-site accessory retail sales, commercial services, and office uses that are not open to the public are subject to the same parking ratio as the primary use.
- <sup>5</sup> *Alley Access*. For properties with *alley* access, one parking space per 10 linear feet of *alley* frontage may be provided instead of the parking ratio shown in Table 142-05G. Within the beach impact area of the Parking Impact Overlay Zone, application of this policy shall not result in a reduction of required on-site parking.

**§155.0238 Use Regulations Table of CU Zones**

Existing code requires CUP for churches in CU-1-, CU-2, and CU-3 zones; allows Assembly and Entertainment by right in CU-2 and CU-3. **Revise Table 155-02C per citywide use category change.**

**Comment [a3j13]:** Ask CPG about the desired use process for CU-1 zone and update accordingly. (CU-1 does not allow other assembly so the CUP requirement could remain). The CU-2 and CU-3 zones should be changed to "L" to make this a limited use per citywide change.

**Chapter 15, Article 10: La Jolla Shores Planned District****§1510.0303 Single-Family Zone - Permitted Uses****§1510.0305 Multi-Family Zones - Permitted Uses****§1510.0307 Visitor Zone-Permitted Uses****§1510.0309 Commercial Center Zone-Permitted Uses**

**Comment [a3j14]:** Ask CPG about desired use process and update accordingly. If CUP is required in SF, then additional sections in the LSPDO will need to be amended (to ensure that the process for churches is not more restrictive than other assembly uses permitted in the zone). The PDO currently has pyramid zoning, where each successive zone includes the uses/process level of the less intense zone plus more allowable uses.

**ISSUE #27: Drive-in and Drive-through Eating and Drinking Establishments**

Amend Ch 13 Zones: Chapter 13 **Tables**

- Not permitted: in open space, agricultural or residential; IS, IP-1-1 or IH-1-1; or in pedestrian oriented CN-1-1 or CN-1-3, CV-1-2; CC-3, CC-4-4, CC-4-5, CC-5-4, CC-5-5
- Permitted by right: in CR; CV-1-1; CC-1, CC-2, CC-4-1, CC-4-2, CC-4-3, CC-5-1, CC-5-2, CC-5-3; and IL-3-1

**Comment [a3j15]:** Add new footnote to eating and drinking establishment category in all zones where allowed that states "Eating and drinking establishments abutting residential zones may operate only during the hours between 6:00 a.m. and 12:00 midnight."

- Permitted as conditional use: in CN-1-2; IP-2-1, IL-1-1, IL-2-1, IH-2-1

Amend Table 131-05B footnote 4 (remove existing limit applicable to CN zones).

### **§131.0623 Additional Use Regulations of Industrial Zones**

The additional use regulations identified in this section are applicable to uses where indicated in Table 131-06B.

(a) [No change.]

(b) Eating and drinking establishments are permitted subject to the following:

(1) [No change.]

(2) [See Issue #28.]

(3) ~~No Drive-in or~~ drive-through services are permitted subject to approval in accordance with Section 141.0607; and

(4) Eating and drinking establishments abutting residential zones may operate only during the hours between 6:00 a.m. and 12:00 midnight.

(b) through (d) [No change.]

(e) [See Issue #22]

(f) through (i) [No change.]

### **§141.0607 Eating and Drinking Establishments Abutting Residentially Zoned Property**

~~Eating and drinking establishments on premises abutting residential zones are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the regulations in Section 141.0607(a). Eating and drinking establishments abutting residentially zoned property that do not comply with Section 141.0607(a) may be permitted with a Neighborhood Use Permit subject to the regulations in Section 141.0607(b).~~

(a) ~~Limited Use Regulations~~

(1) ~~Eating and drinking establishments abutting residential zones may operate only during the hours between 6:00 a.m. and 12:00 midnight.~~

(2) ~~In the IL 3-1 zone, eating and drinking establishments shall also comply with Section 131.0623(b).~~

**Comment [a3j16]:** Not permitted in IS, IP-1-1, or IH-1-1 (zones where eating and drinking is not permitted).

**Comment [a3j17]:** Would replace the existing section with a new separately regulated use section for eating and drinking establishments with a drive in or drive through component.

**Comment [a3j18]:** Limit on hours of operation is proposed to be retained for drive throughs and will be transferred as a new footnote to ch 13 use tables for all zones where Eating & Drinking establishments are permitted in order to reflect the existing limit on hours adjacent to residential.

- (3) ~~Drive in and drive through restaurants, live entertainment, and the sale of intoxicating beverages other than beer and wine are not permitted in the CN zones.~~
- (b) ~~Neighborhood Use Permit Regulations. Except in the CN zones, eating and drinking establishments abutting residential zones that do not comply with Section 141.0607(a) may be permitted with a Neighborhood Use Permit subject to the following regulations.~~
- (1) ~~All activities associated with the establishment shall occur within an enclosed building between the hours of 12:00 midnight and 6:00 a.m.~~
- (2) ~~Drive up or drive through service is not permitted between the hours of 12:00 midnight and 6:00 a.m.~~
- (3) ~~Live entertainment is not permitted between the hours of 12:00 midnight and 6:00 a.m.~~
- (4) ~~The operator of the establishment shall take reasonable steps to prevent loitering on the premises, in parking lots serving the premises, and on public sidewalks adjacent to the premises.~~
- (5) ~~In the IL-3-1 zone, eating and drinking establishments shall also comply with Section 131.0623(b).~~

**Comment [a3j19]:** Revise existing Footnote 4 to Table 131-05B to state: "Drive-in and drive-through restaurants, ~~live entertainment and the sale of intoxicating beverages other than beer and wine~~ are not permitted in the pedestrian oriented CN-1-1 and CN-1-3 zones; and are a conditional use in CN-1-2 zones subject to Section 141.0607. ~~Live entertainment and the sale of intoxicating beverages other than beer and wine are not permitted in CN zones, unless a Planned Development Permit is granted in accordance with Section 126.0602(b)(1).~~"

**§141.0607 Eating and Drinking Establishments with a Drive-in or Drive-through Component**

Eating and drinking establishments with a drive-in or drive-through component are permitted by right in the zones indicated with a "P" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones). Eating and drinking establishments with a drive-in or drive-through component in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the following regulations:

- (a) The decision maker shall impose conditions addressing the following as necessary to ensure that eating and drinking establishments with a drive-in or drive-through component do not result in adverse impacts on adjacent properties or surrounding neighborhoods including:
- (1) Adequate parking to address customer and employee parking demand;
- (2) A pedestrian and vehicular circulation plan that ensures public safety;
- (3) Space for vehicle queuing for the associated drive-in or drive-through component;
- (A) Queue space for a minimum of five cars shall be provided for each drive-up service window or position as measured from the food/beverage pick-

**Comment [a3j20]:** Applies to CN-1-2; IP-2-1, IP-3-1, IL-1-1, IL-2-1, IH-2-1, and IBT zones. These are zones where eating and drinking facilities are currently allowed by right, and where a drive through component is allowed only via a discretionary permit (PDP).

up window. The queue space for each car shall be 10 feet wide and 20 feet long.

**Comment [a3j21]:** This is existing requirement for drive-through service per Section 142.0560(i).

(B) Required queue spaces shall not obstruct access to parking aisles or parking spaces.

(4) Limits on the hours of operation:

(A) In CN zones and on properties abutting residentially zoned property, eating and drinking establishments with a drive-in or drive-through component shall not operate between the hours of midnight and 6:00 a.m.

(B) Hours may be further limited by the decision maker as appropriate for the location.

(5) Noise reduction techniques, including measures to ensure that speaker systems are not audible beyond the *property line* above daytime ambient noise levels and do not exceed 65 decibels at the *property line*.

(6) Lighting control plan to minimize potential off-site impacts; and

(7) Litter control plan to keep the facility and adjacent properties free of litter.

(A) A minimum of one outdoor trash and one outdoor recycling receptacle shall be provided on-site adjacent to each driveway exit. At least one additional on-site outdoor trash receptacle shall be provided for every 10 required parking spaces.

(B) At least once per business day, employees of the eating and drinking establishment with drive-in or drive-through component shall collect on-site and off-site litter including food wrappers, containers, and packaging from restaurant products generated from customers within a 300 foot radius of the property.

(8) The operator of the establishment shall take reasonable steps to prevent loitering on the *premises*, in parking lots serving the *premises*, and on public sidewalks adjacent to the *premises*.

(b) Amortization period for *Previously Conforming* Hours of Operation

(1) An amortization period of 7 years shall apply to any eating and drinking establishment with a drive-in or drive-through component that is *previously conforming* with respect to the hours of operation required by Section 141.0607(a)(4). Seven years from the effective date of the ordinance [that established this amortization period], such establishments shall cease operation of



the drive-in or drive-through window component between the hours of midnight and 6:00 a.m.

- (2) Facilities with an approved Planned Development Permit that authorizes less restrictive hours of operation are permitted to operate in accordance with the hours specified in the *development permit* and shall not be subject to the amortization period in Section 141.0607(b)(1), unless the *development permit* is revoked in accordance with Section 121.0313 or is otherwise cancelled or rescinded by the *permit holder* in accordance with Section 126.0110.

#### **ISSUE #28: Process for Companion Units in Agricultural-Residential Zones**

##### **§131.0322 Use Regulations Table for Agricultural Zones**

The uses allowed in the agricultural zones are shown in Table 131-03B.

Amend “Companion Units” use category in Table 131-03B. Keep as not permitted in AG;  
Change from “C” to “L” in AR zones

#### **ISSUE #29: Allowance for Live Entertainment in Industrial Zones**

##### **§131.0623 Additional Use Regulations of Industrial Zones**

The additional use regulations identified in this section are applicable to uses where indicated in Table 131-06B.

- (a) [No change.]
- (b) Eating and drinking establishments are permitted subject to the following:
  - (1) [No change.]
  - (2) No live entertainment is permitted on the *premises* in the IH zones or on property abutting residential development; and
  - (3) [See Issue #26.]
- (c) through (d) [No change.]
- (e) [See Issue #22]
- (f) through (i) [No change.]

#### **ISSUE #30: Satellite Antennas in Industrial Zones**

##### **§141.0405 Satellite Antennas**

Satellite antennas are permitted as a limited use subject to Section 141.0405(b), and may be permitted with a Neighborhood Use Permit subject to Section 141.0405(c), or with a Conditional Use Permit decided in accordance with Process Three subject to Section 141.0405(d).

- (a) Exemption. ~~Satellite antennas that are 5 feet in diameter or smaller are permitted in all zones and~~ The following satellite antennas are exempt from the requirements under Sections 141.0405 and 141.0420:
  - (1) Satellite antennas in all zones that are 5 feet in diameter or smaller; and
  - (2) Satellite antennas that are accessory uses in industrial zones.
- (b) Limited Use Regulations. Satellite antennas that exceed 5 feet in diameter are permitted as a limited use in zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations:
  - (1) through (4) [No change.]
  - (5) Ground-mounted satellite antennas shall not be located in the street yard street yard, front yard yard, or street street side yard yard of a premises premises.
  - (6) through (8) [No change.]
- (c) [No change.]
- (d) Conditional Use Permit Regulations. Except for satellite antennas ~~which are accessory uses in industrial zones~~ permitted in accordance with Section 141.0405(a)(2), satellite antennas that exceed 10 feet in diameter may be permitted only with a Conditional Use Permit decided in accordance with Process Three subject to the following regulations:
  - (1) through (3) [No change.]

### **ISSUE #31: Historic Buildings Occupied by Uses Not Otherwise Allowed**

#### **§141.0411 Historical Buildings Occupied by Uses Not Otherwise Allowed**

*Historical buildings* occupied by uses not otherwise allowed may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) through (b) [No change.]
- (c) The proposed use of the building shall be compatible with the uses in the surrounding area or shall be consistent with the purpose for which the building was originally

designed. In order to minimize detrimental effects to neighboring properties, any proposed separately regulated uses in a historical building shall be required to comply with the regulations in Chapter 14, Article 1 (Separately Regulated Use Regulations) for each separately regulated use as applicable.

(d) through (h) [No change.]

#### **§156.0315 Separately Regulated Uses**

(a) through (g) [No change.]

(h) *Historical Buildings Occupied by Uses Not Otherwise Allowed*

*Historical buildings* occupied by uses not otherwise allowed may be permitted with a Conditional Use Permit in accordance with Process Three subject to the following regulations:

- (1) The building must be designated as a *historical resource* by the City of San Diego Historical Resources Board before approval of the Conditional Use Permit.
- (2) The proposed use of the *historical resource* shall be compatible with the uses in the surrounding area or shall be consistent with the purpose for which the building was originally designed. In order to minimize detrimental effects to neighboring properties, any separately regulated uses proposed in a historical resource shall be required to comply with the regulations in Section 156.0315 (Centre City Planned District Ordinance Separately Regulated Uses) or Land Development Code Chapter 14, Article 1 (citywide Separately Regulated Use Regulations) for each separately regulated use as applicable.
- (3) The *historical resource* shall be preserved, restored, rehabilitated, reconstructed, or maintained in its original historical appearance in accordance with Land Development Code Chapter 14, Article 3, Division 2 ~~of this Code~~.
- (4) Any facilities that are constructed as part of the new use shall be designed to be similar in scale and style with the historical use, and cause no more than a minor alteration to the *historical resource* in accordance with Historical Resources Regulations unless the *development* is approved through a Site Development Permit or Neighborhood Development Permit in accordance with Land Development Code Chapters 11 through 14 ~~of this Code~~.

(i) through (j) [No change]

**ISSUE #32: Indoor Theaters less than 10,000 Square Feet in Size**

All Ch 13 use tables will need to be amended to reflect change in land use category.

**§141.0623 Theaters That Are Outdoor or over ~~5,000~~ 10,000 Square Feet in Size**

Indoor theaters 10,000 square feet or less in size are permitted by right in accordance with Process One in the zones indicated with a “P” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones). Theaters that are outdoor or over ~~5,000~~ 10,000 square feet in size may be permitted with a Conditional Use Permit decided in accordance with Process Four in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) Off-street parking shall be provided at a level sufficient to serve the facility without impacting adjacent or nearby property. Within the beach impact area of the Parking Impact Overlay Zone, off-street parking shall be provided at a ratio not less than one parking space for every three fixed seats or one space for every 21 sq ft of gross floor area where there are no fixed seats.
- (b) Hours of operation shall be limited so that neighboring *development* is not disturbed by noise and lights.
- (c) A litter control plan shall be required to keep the facility and adjacent property free of litter.
- (d) All storage, service, and repair areas shall be located on the site so that they are not visible from adjacent *development* and *public rights-of-way*.

**ISSUE #33: Marine-Related Uses in the Coastal Zone****§141.1003 Marine-Related Uses in the Coastal Zone**

Marine-related uses in the Coastal Overlay Zone are permitted without limitation in the zones indicated with an “P” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones).

Marine-related uses in the Coastal Overlay Zone may be permitted with a Conditional Use Permit decided in accordance with Process Four in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) through (c) [No change.]

**Comment [a3j22]:** This use is permitted by right and identified as a “P” in all industrial zones, except IP.